Supreme Court, U. S.
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VOLUME III

APPENDIX

* * *

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-6

* * *

HILMAR G. MOORE, ET AL.,

v.

JOHN PLEASANT SIMS, ET AL.

* * *

APPEAL FROM THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

* * *

JURISDICTIONAL STATEMENT FILED JULY 3, 1978
PROBABLE JURISDICTION NOTED OCTOBER 30, 1978

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ARTICLE 24

PRETRIAL ORDER

PRETRIAL ORDER

STATEMENT OF THE CASE

Plaintiff's Statement of the Case:

This Civil Action is a challenge to the constitutionality both on their face and as applied to Plaintiffs, of portions of Chapters 11, 14, 15, 17, 34 and 35, TITLE 2, TEXAS FAMILY CODE.

Plaintiffs have been irreparably injured by the acts of the Defendants; said acts resulting in deprivation of Plaintiff's rights, privileges, liberties and immunities secured to them by the Constitution of the United States, while acting under color of such State Statutes and by use of standards and procedures which are violative of Article I, Section 9 of and the First, Fourth, Fifth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States for which deprivations Plaintiffs here seek redress.

Plaintiffs seek a Declaratory Judgment declaring certain statutes of the State of Texas contained in TITLE 2, TEXAS FAMILY CODE repugnant to the Constitution of the United States, null and void on their face, and also as applied to Plaintiffs. Plaintiffs further request this Court to permanently RESTRAIN and ENJOIN operation, enforcement and implementation of such State statutes and rules, regulations and policies made pursuant and incident thereto.

Plaintiffs seek monetary damages.

Defendants' Statement of the Case:

On March 25, 1976, the State Department of Public Welfare received a report of physical abuse to Paul Sims, an eight year old student at an elementary school in Houston, Texas. Rex Downing, a welfare case worker, was assigned to go to the school in order to investigate.

He was advised that the child had received a spanking from his father, John P. Sims, earlier in the day. Following an examination of Paul's injuries, which included bleeding from both buttocks, Downing arranged to have the boy and his sisters, who attended the school, examined by a doctor at the Harris County Child Welfare Unit.

After examination, the physician, Dr. Marie Surgi, concluded that Paul Sims was a very badly bruised and abused child. His buttocks were found to have ulcerated skin in the center oozing blood. He had numerous bruises on other parts of his body. His sisters were also found to have bruises to a lesser extent.

In conversation, it was determined that Mrs. Sims had administered physical discipline to Paul the night before, on March 24, 1976. Teachers testified to the beating at school on March 25.

The Harris County Child Welfare Unit decided to take possession of the children in this emergency situation in order to protect them from danger to their health and physical safety. (Chapter 17, Texas Family Code, Sec. 17.01). This was accomplished by placing the children in a foster home until further investigation could be conducted.

The Harris County Child Welfare Unit then proceeded to file a Suit for Protection of Child in Emergency. This was done without notice to the parents, pursuant to Section 17.03 of the code. The suit asked that Gene Lege, Director, Harris County Child Welfare Unit be appointed temporary managing conservator of the Sims children, pending further investigation. This suit was filed on March 26, 1976, and a temporary order was issued on that day. All of this was done pursuant to Chapter 17, of the Family Code which authorizes such temporary orders for a period not to exceed ten days.

On March 26, 1976, the Sims retained an attorney, Gladys Goffney, to represent them in the proceedings regarding their children.

On March 31, 1976, Mrs. Goffney submitted a Motion To Modify the emergency order previously granted pursuant to Chapter 17 of the Family Code. Section 17.06 makes it mandatory upon the Court to conduct a hearing, if a parent, after notice to those involved in the original hearing, seeks to modify an emergency order granted under Chapter 17. For some reason, not satisfactorily explained, the clerk failed to accept and schedule the motion, and the attorney for the plaintiffs did not insist upon its being filed. Neither did the attorney for the plaintiffs seek a writ of mandamus requiring the clerk to accept the motion for filing and the judge to conduct a hearing pursuant thereto. Needless to say, such a hearing would have allowed the parents an opportunity to present their case fully within the first ten days after the granting of the original temporary order.

Instead of proceeding with the motion to modify, a remedy available under Chapter 17 of the Family Code, the attorney for the plaintiff filed a Petition for Writ of Habeas Corpus in the Juvenile Court of Harris County, Texas. Without alleging in specific terms the manner in which the children were "illegally confined and restrained" by Harris County Child Welfare, the Sims petitioned the Court to have the children brought immediately before the Court so that they might be returned to the Petitioners. The Court held a hearing and refused to grant the petition on April 5, 1976. No further action has been taken in the habeas corpus matter.

At the hearing on Petition for Writ of Habeas Corpus, the Juvenile Court was advised that the parents and children were residents of Montgomery County, Texas.

The Juvenile Court of Harris County allowed the Harris County Child Welfare Unit until 5:00 P.M. on April 5 to file a proceeding under Chapter 11 and 14 of the Family Code after which the matter would be transferred to Montgomery County. An Original Petition in Suit Affecting Parent-Child Relationship was filed and an ex parte temporary order in the nature of a temporary restraining order was issued pursuant to Section 11.11 of the Family Code. Further, the matter was transferred to the Juvenile Court of Montgomery County pursuant to Section 11.06 of the Family Code. At this time, Paul Sims was in the hospital recovering from the physical abuse inflicted upon him by his parents. It was the feeling of the Harris County Child Welfare Unit that the children should not be returned to the parents until the parents had an opportunity to attend counseling. The judge agreed.

On April 6, 1976, after the temporary order pursuant to Section 11.11 was signed, the Juvenile Court of Harris County was unable to set a time for a hearing in Montgomery County on temporary injunction as required by Section 11.11(b) of the Family Code, and Rules 680 and 681, Texas Rules of Civil Procedure. Therefore, at the time of transfer of all papers to the Juvenile Court of Montgomery County, a temporary order was in effect, due to expire within 10 days from April 5, 1976, unless continued as provided in Rules 680 and 681, Texas Rules of Civil Procedure. This order provided that immediate temporary conservatorship be placed in Gene Lege, Director of the Harris County Child Welfare Unit, with respect to the three Sims children. However, the order did not state, on its face, that it was an ex parte order or that it was to expire in 10 days.

On April 9, 1976, the file in the Sims case was received by the Juvenile Court of Montgomery County, Texas. The order signed by Judge Robert L. Lowry, Juvenile

Judge of Harris County, was evidently treated as a preliminary injunction, rather than as a temporary restraining order by Judge Coker of the Juvenile Court of Montgomery County, Texas. Consequently, no hearing on a temporary injunction was set nor was any service of process issued. The attorney for the Sims did not seek to have such a hearing set down or to obtain a writ of mandamus requiring one to be held.

Instead of the plaintiff seeking a full evidentiary hearing on the merits, on April 29, 1976, this cause was filed in United States District Court. At a hearing on May 5, 1976, the Court found that the Sims children were not in the legal possession of the Harris County Child Welfare Unit. Due to the expiration of the temporary restraining order, issued ex parte under Section 11.11 of the Family Code, this Court issued an order returning the children to the custody of their parents.

In taking action to return the Sims children to the custody of their parents on May 5, 1976, this Court advised the State Department of Public Welfare and its attorneys that the State was not enjoined from taking action under state law to properly establish a temporary conservatorship in the State Department of Public Welfare.

On May 14, 1976, the State Department of Public Welfare sought, once again, to protect Paul Sims by filing another "Suit Affecting the Parent-Child Relationship" in the Juvenile Court of Montgomery County, Texas.

The Court was asked to appoint Helen Jurries, Supervisor, State Department of Public Welfare, as Managing Conservator of Paul Sims. On May 14, 1976, Judge Coker signed a show cause order with writ of attachment which ordered Paul Sims delivered to Mr. and Mrs. James Carter, the grandparents by adoption of

Paul Sims, and naming them temporary managing conservator of Paul Sims. The court set a hearing for May 21, 1976, at which the continuation of the temporary conservatorship was to be considered. Despite several efforts to serve this writ, the Sims were not served and the date for the hearing was changed to June 10, 1976.

On May 21, 1976, the Plaintiffs filed an application for temporary restraining order seeking to halt state court proceedings. A temporary restraining order was granted, ex parte, on May 21, 1976. A hearing was held on June 7, 1976, at which time an order was issued restraining any further proceedings in state court, pending final adjudication on the merits herein.

Instead of leaving this suit in state court, where all constitutional and substantive questions in this matter could be adjudicated, this Court is faced with a challenge to a state statute, formulated after several years of careful consideration. The plaintiffs, thus far, have been allowed to escape any carefully considered presentation of the merits of the child abuse questions herein. Further, they seek to completely nullify all of the provisions of Chapters 11, 14, 15, 17 and 34 of Title II of the Texas Family Code.

The Defendants, if necessary, will fully support the reasonableness, compelling state interest, and constitutionality of the Family Code provision challenged herein.

JURISDICTION

PLAINTIFFS ALLEGE THAT:

Jurisdiction is conferred on this Court under: 28 U.S.C. 1331, this being an action wherein the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and arises under the

Costitution (sic), laws or treaties of the United States; 28 U.S.C. 1342(3)(4), this being an action authorized by the self-executing provisions of the Fourteenth Amendment to the Constitution of the United States, as well as by 42 U.S.C. 1983 to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress providing equal rights or civil rights of all persons within the jurisdiction of the United States; and, this is a proper case for determination by a three-judge court pursuant to 28 U.S.C, Sections 2201, 2281 and 2284, since Plaintiffs seek an injunction to restrain Defendants, one or more of whom are state officers, from the enforcement, operation and execution of state statutes of statewide applicability on the grounds that said statutes are contrary to the Constitution of the United States.

DEFENDANTS:

As to Defendants Raul Jimenez, Jamie Clements, Hilmar G. Moore, Raymond Vowell, Gene Lege and Marian Lockely (sic) in their individual capacities and in their official capacities, insofar as they are sued for damages and injunctive relief under 42 U.S.C. 1981 and 1983, there is no case or controversy against said defendants under the pleadings in this cause, according to the law set forth in *Rizzo v. Goode*, 45 U.S.L.W. 4095 (1976).

The defendants herein further urge in their Motion to Dismiss, that this court should refrain from assuming jurisdiction in this controversy under the principles of comity and federalism set forth in *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975).

Further, the Defendants would show a lack of standing in the plaintiffs to challenge any provision of Chapter 15 of the Texas Family Code, since the state did not seek any application of that Chapter to the plaintiffs.

Further, the plaintiffs should have standing to challenge only those portions of Chapters 11, 14, 17 and 34 of the Family Code as were applied to them.

CONTENTIONS OF THE PARTIES

I. PLAINTIFFS CONTEND THAT:

1) This Three-Judge Panel should grant Plaintiffs Declaratory Relief and thereby remove the doubt and uncertainty surrounding substantive and procedural interpretations of the many provisions of Chapters 34, 35, 17, 11, 14 and 15 of Title 2, Texas Family Code giving rise to: 1) A real and actual controversy between parties having adverse legal interests; 2) with legal issues of such immediacy and reality as to be ripe for determination; and, 3) involving dispute over constitutionally-guaranteed rights, privileges, immunities and liberties of Plaintiffs.

2) The reciprocal rights of family unity, integrity, privacy and mutual association emanating between parent and child are basic fundamental freedoms protected by the United States Constitution.

3) Plaintiffs recognize a legitimate interest of the State in protecting children. However, State intrusion into the fundamental liberties of family freedom, unity and privacy must be accomplished through statutes which are within limitations imposed by the Constitution and the interest of the State should be harnessed by Procedural Due Process.

4) Provisions of Chapters 34, 35, 17, 11, 14 and 15 of Title 2, Texas Family Code are repugnant to and violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment, both on their face and as applied; and additionally are

violative of Substantive Due Process and Void For Vagueness in that they are couched in terms having no common meaning and fail to provide explicit, specific, ascertainable standards which are incapable of arbitrary, erratic and capricious enforcement.

List of Particulars:

§34.01 Is facially unconstitutional in that it is void for overbreadth.

§34.02(a) Is facially unconstitutional and void for vagueness.

§34.03 Is facially unconstitutional in cloaking the person reporting with immunity from civil and criminal bility (sic), thus denying rights to confrontation and cross-examination, particularly those who by provisions of 34.02(d) may report anonymously.

§34.04 Is facially unconstitutional in that it violates the privilege against self-incrimination.

§34.05 Is facially unconstitutional in that it is violative of First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendment protections of family unity, rights to privacy, freedom from unreasonable search and seizure, rights to counsel of the minors affected, and procedural due process. It is further facially violative of the same protections herein enumerated in that it interlocks and is interdependent upon the Sections hereinabove set forth, as well as with §34.02(d).

§35.04 Is facially unconstitutional in that it infringes upon fundamental family rights protected by the First and Ninth Amendments without protection of procedural

due process; sweeps away First, Fifth and Fourteenth Amendment guarantees not to be subjected to examinations by physicians on the part of minors absent judicial order therefor or consent of parents; takes away rights of parents granted by §12.04, Title 2, Texas Family Code; and additionally is void for overbreadth.

§17.01 Is facially unconstitutional in that it is violative of substantive and procedural due process and of rights to equal protection of law; and further is void for vagueness and overbreadth.

§17.02 Is facially unconstitutional and void for vagueness in that it sets no standard for "immediately", no guidelines for the "hearing"; and is further violative of substantive and procedural due process in that it omits to place a burden upon the State to justify its interference into fundamental family rights.

§17.03 Is facially unconstitutional in that it sweeps away rights to notice and thus is violative of procedural due process.

§17.04 Is facially unconstitutional in that it is void for vagueness and overbreadth by omitting to define "immediate" and "emotional injury" and "on a showing" and to set standards therefor; further, it is facially violative of procedural due process.

§17.05 Is facially violative of procedural due process, in that it permits stacking of ex parte orders, places the burden upon parents to go forward to restore fundamental family unity rather than upon the State to justify

its interference therewith, permits the interference of the State into First, Fourth, Fifth, Ninth penumbrally-protected rights to flow from "the 10-day period following the date of the order" rather than from date of seizure of children, and is further unconstitutionally void for vagueness in that no burden is placed upon the State to return children or penalty for its failure to do so, and thus, is additionally unconstitutional by omission of safeguards for fundamental rights.

§17.06 Is facially unconstitutional in that it is violative of procedural due process in placing a burden upon the parents to give notice for modification of an ex parte order under interlocking and interdependent §17.03 which places no burden of notice upon the State, and thus is violative of the Equal Protection Clause;

As applied to Plaintiffs, it unconstitutionally swept away their rights to procedural and substantive due process in that they were unable to obtain a hearing upon their Motion To Modify at a time when State interference had already disturbed their fundamental rights to family unity and privacy without notice or hearing under interlocking and interdependent Sections of Chapters 17 hereinabove set forth already set in motion against them through State action.

§17.07 Is facially unconstitutional in that it is violative of of (sic) procedural due process by omission by providing appeal does not stay a §17.04 ex parte order yet fails to provide

an expedited hearing as a minimal procedural due process safeguard, and is further violative of the Equal Protection Clause in treating such cases specially.

§17.08 Is facially unconstitutional as violative of procedural due process in that it interlocks and is interdependent upon §11.05 which allows the State to pick and choose jurisdiction, thus unconstitutionally delegating legislative and judicial authority to a State Agency.

§17.09 Is facially violative of substantive due process and is void for vagueness in its attempts to wrap those persons who effectuate summary seizure of children in immunity from civil liability upon a standard of "reasonable cause to believe there was an immediate danger to the physical safety or emotional well-being of the child," and is thus overbroad as well as chilling to fundamental family unity and privacy.

§11.03 Is facially unconstitutional by omission in that it sets no standards or safeguards for substantive and procedural due process whereby the State must show its standing and legitimate interest in interference with fundamental family rights by a "clear and convincing" standard of proof at a probable cause hearing had a meaningful time to show 1) emergency and/or exigent circumstances; and 2) that the parents are the cause thereof.

It is further facially void for overbreadth in providing standing to interfere with

fundamental family rights on what amounts to an unlimited basis to those who have not established a right to interfere by a probable cause hearing upon a "clear and convincing standard" of proof and done so at a meaningful time.

§11.04(a)
§11.04 c(1)
§11.05(a)
§11.05(c)
§11.06(a), (c), (d), (e), (f), (g), (h)
§11.071(a) (1), (2), (b), (c)

Are facially unconstitutional in that they form a statutory scheme whereby their interlocking and interdependence are violative of procedural due process through built-in delays; are void for vagueness in that they are capable of arbitrary application; permit the State to set jurisdiction, thus unconstitutionally delegating legislative and judicial authority to a State Agency, and affirm jurisdiction set by a State Agency's mistake, and are thus further violative of procedural due process and place the burden upon parents to attack such jurisdiction set by mistake rather than upon the State Agency having such unconstitutional legislative and judicial authority; and are violative of the Equal Protection Clause in that rights of appeal from §11.06(f) transfers or failures to transfer are treated specially and removed on the face of such statute.

Further, as applied to plaintiffs, by arbitrary application of transfer provisions, fundamental family rights to unity were caused to be distrupted (sic) for an additional period of 29 days without notice or hearing.

§11.09 Is facially violative of procedural and substantive due process in that fundamental family unity can be interfered with by providing for notice by certified mail.

§11.10 Is facially unconstitutional by omission to provide Sixth Amendment rights to counsel for children in proceedings affecting fundamental family rights; and is further violative of substantive and procedural due process in permitting a State Agency to act as guardian ad litem in suits wherein such Agency is a litigant with an interest in the outcome of the case.

§11.11 Is facially unconstitutional and violative of procedural due process, and was unconstitutionally applied to Plaintiffs as well, in permitting and authorizing stacking of ex parte orders through coupling with §17.05, in omitting to provide for mandatory return of children by a State Agency at the expiration of such Orders together with safeguards and penalties for failure of the State Agency so to do upon the expiration of such orders; further, by authorizing built-in delays to further disrupt and interfere with fundamental family rights.

§11.12 Is facially violative of substantive due process in that a State Agency is authorized to make social studies for submission to the fact-finder in suits in which the Agency is a party litigant with an interest in the outcome of the case, thus creating bias and prejudice against the parents and in favor of the State Agency.

§11.13 Is facially violative of procedural due process and Sixth Amendment rights to trial by jury.

§11.15 Is facially unconstitutional and violative of procedural and substantive due process by omitting to provide a "clear and convin-

cing" standard of proof in the initial stages of litigation and "beyond a reasonable doubt" standard of proof at final hearings for civil statutes which so affect fundamental family rights as to be penal in nature and to require the standards of proof for penal statutes.

§11.16 Is facially unconstitutional in that it is violative of procedural due process in treating such cases specially and sweeping away rights to notice and to be informed of procedures affecting fundamental rights.

§14.07 (a), (b) Are facially unconstitutional and void for vagueness by omitting to provide standards of common meaning which are capable of even-handed enforcement; and are further facially violative of substantive due process in omitting to consider reciprocal rights which flow between parent and child to comprise fundamental family unity.

§15.02(1) (D), (E), (I) and (2) Are facially void for vagueness by being couched in terms which are incapable of a common meaning; interlocks and is interdependent with §34.05 to violate substantive and procedural due process, Fifth Amendment rights against self-incrimination, and Ninth Amendments rights to privacy.

All The Foregoing Sections When taken together as a whole because of their interlocking and interdependence were either applied to Plaintiffs or Plaintiffs received substantial threats of the imminent application thereof against them as to amount to violation of their First, Fourth, Fifth, Sixth, Ninth, Tenth and

Fourteenth Amendment rights and of the rights of the minor plaintiffs to a writ of habeas corpus as guaranteed by Article I, Section 9 of the United States Constitution.

5) This Three-Judge Panel should further grant Plaintiffs permanent injunctive relief against enforcement of those provisions of Title 2, Texas Family Code in controversy, under color of which Defendants have caused Plaintiffs to confront herein a situation involving: 1) Extraordinary circumstances whereby irreparable harm and injury resulted to Plaintiffs, and against which they have no other adequate protection for the future; 2) repeated bad-faith prosecutions and harassment by Defendants; and, 3) flagrant, patent violations of constitutional rights, privileges and immunities guaranteed to Plaintiffs.

6) The Central Registry (CANRIS) set up, maintained by and under sole control of the Texas State Department of Public Welfare under color of Sections 34.02(d), 34.06 and 34.08 of Title 2, Texas Family Code is violative of individual rights secured by the First, Fourth, Fifth and Ninth Amendments.

List Of Particulars:

§34.02 (d) Is facially unconstitutional in that it authorizes and permits "anonymous" reports, thereby violating rights to confrontation of witnesses; is void for vagueness in its failure to set standards for even-handed application and enforcement by omitting to define "abuse"; and interlocks into §34.06 to carry forward the same violations of guaranteed rights.

§34.06 Unconstitutionally facially delegates judicial

authority to a State Agency to determine and apply provisions of §34.02(d) without affording notice or opportunity to those affected to refute same and absent judicial determination of guilt for "abuse" or "neglect"; unconstitutionally violates substantive and procedural due process, equal protection of the laws, and rights to privacy.

§34.08 Is facially unconstitutional in that it sweeps away rights to notice and to be informed of charges against a person, to be confronted with the witnesses against a person, and unconstitutionally on its face delegates judicial and legislative authority to a State Agency and attempts to cloak such Agency with rights to confidentiality to such information so gathered.

All Sections Above Are cumulatively violative of the *Freedom Of Information Act*, 5 U.S.C.A. §553 (1970), as amended; the *Family Education And Privacy Act of 1974*, 20 U.S.C.A. §1232g, as amended; and *V.A.T.S. Art. 6252-17a.*

II. DEFENDANTS CONTEND THAT:

The Defendant agents and employees of the State Department of Public Welfare claim that local welfare workers acted in good faith to protect the best interest of the children, Paul, Shawana and Sabrina Sims, by seeking valid judicial orders in Harris and Montgomery Counties to create a temporary managing conservatorship and give the managing conservator temporary custody of the children. This occurred after evidence of severe physical abuse was found, for which both parents have some responsibility. The defendants acknowledge that the children were kept in foster

homes after a temporary order under Chapter 11 had expired. However, the parents, who retained an attorney shortly after the children were taken from the home were remiss in failing to insist on their right to file a motion to modify the order of the Harris County Court and to have an evidentiary hearing on the same. Likewise, they failed to insist upon their right to a hearing from the State Court in Montgomery County. The Defendants would further show that, while there may have been a failure to comply with one aspect of the Texas Family Code, the Code is constitutional on its face and there is a compelling state interest to allow quick and effective emergency removal of children from homes where child abuse occurs.

ADMISSIONS OF FACT

PLAINTIFFS AND DEFENDANTS LIST THE FOLLOWING FACTS THAT HAVE BEEN STIPULATED AND ADMITTED AND WHICH WILL REQUIRE NO PROOF:

1. On March 25, 1976, adult and minor plaintiffs maintained a residence located at Route 3, Box 1304, Conroe, Montgomery County, Texas.

2. On March 25, 1976, the three minor plaintiffs were enrolled in and regularly attending classes at John G. Osborne Elementary School in Houston, Harris County, Texas, for which adult minor (sic) plaintiffs paid a monthly tuition charge to the Houston Independent School District.

3. Minor plaintiff Sabrina Marie Sims, the only natural born child of adult plaintiffs, was born to them August 16, 1967, and is now age nine years.

4. Minor plaintiff Paul Edward Sims was born December 10, 1967, is now age eight years, and was

adopted by adult plaintiffs through Harris County Child Welfare Unit (hereafter referred to as Child Welfare) pursuant to Decree of Adoption granted July 18, 1974, by Robert L. Lowry, Judge of the Juvenile Court of Harris County, Texas (hereafter referred to as Juvenile Court).

5. Minor plaintiff Shawana Evette Sims was born March 2, 1969, is now age seven years, and was adopted by adult plaintiffs through Child Welfare pursuant to Decree of Adoption granted by Judge Lowry on August 12, 1975.

6. On March 25, 1976, in response to a telephone report of child abuse made by personnel of John G. Osborne Elementary School regarding only the minor plaintiff Paul Edward Sims, Child Welfare's agent and employee Caseworker Rex Downing went to the school.

7. That Casewarker (sic) Downing who went to the school March 25, 1976, to make investigation interviewed the minor plaintiff Paul Edward Sims who had been the subject of the telephone report of abuse for "Maybe a couple of minutes, three minutes."

8. That Rex Downing took possession and control of Paul Edward Sims, Shawana Evette Sims and Sabrina Marie Sims on March 25, 1976.

9. That Harris County Child Welfare did not physically deliver the three minor plaintiffs to the Court on March 25, 1976, nor were they delivered to the Court at any time prior to April 4, 1976. On April 5, 1976, minor plaintiffs were delivered to the Juvenile Court of Harris County pursuant to Subpoena for Writ of Habeas Corpus. There was no notice or hearing afforded any of the plaintiffs by the Juvenile Court of Harris County, Texas.

10. The following day, March 26, 1976, at 4:54 P.M., Betsy C. Conner filed a Suit For Protection of Child In Emergency pursuant to provisions of Chapter 17, Title 2, Texas Family Code, which was docketed under Cause No. 38,295 in the Juvenile Court Number One of Harris County, Texas, and in which all three minor plaintiffs were made subjects of suit.

11. No names of places of residence of the parents or persons responsible for the care of the three minors appears at any place in the suit referred to in paragraph 10, supra, although the Petitioner therein requests "that citation and notice be issued to all persons named."

12. Six minutes after time of filing of such suit and at 5:00 P.M. on March 26, 1976, Judge Robert L. Lowry of the Harris County Juvenile Court entered an Ex Parte Order by the terms of which Gene Lege, Director of Harris County Child Welfare was made temporary managing conservator of the three minor plaintiffs.

13a. On its face such Ex Parte Order recited that the matter was presented to the Court in chambers, without notice to or hearing afforded the adult plaintiffs.

13. No notice, citation or process of any kind was ever issued or served upon the adult plaintiffs in connection with the suit docketed as Cause No. 38,295 filed March 26, 1976. There was no hearing afforded any of the plaintiffs by the Juvenile Court of Harris County, Texas.

14. On March 31, 1976, counsel for the adult plaintiffs filed a Motion To Modify Termporary (sic) Orders For Emergency Protection Of Child with attached proposed Order Modifying Temporary Orders.

Both instruments were stamped "JUV" by the Clerk of the Juvenile Court but were returned to counsel for adult plaintiffs by the Clerk who testified in a hearing before Honorable John V. Singleton on May 5, 1976 at Pg. 75 of the transcript, "Well, with the absence of Judge Lowry, I had taken to Judge Coe, and Judge Coe said he did not want to intervene in any of Judge Lowry's orders that he'd already signed in a case and he's (sic) rather for Judge Lowry to see this and he did bring in to my attention to file a Writ of Habeas Corpus in the District Clerk's office".

15. On March 31, 1976, counsel for adult plaintiffs filed a Petition For Writ of Habeas Corpus seeking return of the three minor plaintiffs, which suit was docketed as Cause No. 1,069,341 in the Juvenile Court Number One of Harris County, Texas, and upon which a hearing was set for April 5, 1976, at 10:30 A.M., at which time the minor plaintiffs were delivered to the Court pursuant to Subpoena for Writ of Habeas Corpus upon Gene Lege.

16. Adult plaintiffs caused notice of the filing of their Petition For Writ of Habeas Corpus and of the hearing set thereon to be served upon Gene Lege, Director of Harris County Child Welfare and also issued Subpoenas for attendance of witnesses.

17. On the date and at the time scheduled for hearing on the Petition For Writ of Habeas Corpus, Judge Lowry determined that all of the Plaintiffs were residents of Montgomery County, Texas.

18. Upon such determination and without receiving evidence, the Court ruled it did not have power to hear the Habeas Corpus proceeding, although Judge Lowry had personal knowledge that the three minor plaintiffs were restrained in Harris

County, Texas, by virtue of his own Ex Parte Order entered March 26, 1976.

19. The Docket Sheet entry made in Cause No. 1,069,341 in the handwriting of Robert L. Lowry, Judge of the Juvenile Court Number One of Harris County, Texas, on April 5, 1976, reads as follows: "Venue in Montgomery County - Case transferred to Montgomery County."

20. Later and at 4:47 P.M. on April 5, 1976, Betsy C. Conner filed a second suit in Cause No. 38,295 on the docket of the Juvenile Court Number One of Harris County, Texas, entitled Original Petition In Suit Affecting The Parent-Child Relationship.

21. At a time subsequent to the 4:47 filing of the Original Petition referred to in Paragraph 20, supra, but still on April 5, 1976, Judge Lowry entered a second Ex Parte Order continuing temporary managing conservatorship, possession and control of the three minor plaintiff in Gene Lege, Director, Harris County Child Welfare.

22. This second Ex Parte Order setting both temporary and final hearings in the second suit shows them both to be set for "the ___ day of _____, 19__ at _____ O'clock __M." and appoints "An attorney _____ . .to serve as guardian ad litem and attorney ad litem and represent the minor child(ren) at all hearings. . .". On its face this same Order recites it was presented to the Court in chambers.

23. On May 5, 1976, at a hearing in the Federal Court, there was testimony adduced that the blanks appearing in the Order had never been filled in.

24. On April 6, 1976, Docket Sheet entries made in the handwriting of Judge Lowry show the Suit

Affecting the Parent-Child Relationship (Cause No. 38,295) and the Habeas Corpus proceeding (Cause No. 1,069,341) were transferred to the Juvenile Court of Montgomer (sic) County, Texas, while the minor plaintiffs remained in Harris County in the possession of Harris County Child Welfare.

25. On April 9, 1976, the full file in Cause No. 38,295 transferred by the Juvenile Court Number One of Harris County, Texas, was received by the Juvenile Court of Montgomery County, Texas, and docketed under Cause No. 3,030.

26. From April 6, 1976, when the file was received by the Montgomery County Juvenile Court up to and including May 5, 1976, the first date of hearing before this Court, no notice, citation or process of any kind was issued or served upon the adult plaintiffs in Cause No. 30,030 not were they afforded opportunity for hearing before the Juvenile Court of Montgomery County, Texas.

27. The three minor plaintiffs remained in the possession and control of Harris County Child Welfare during such period referred to in item 26, supra.

28. On May 4, 1976, still seeking return of their children, adult plaintiffs filed an Application For Leave To File Writ of Habeas Corpus in the Court of Civil Appeals, 14th Supreme Judicial District of Texas, sitting in Houston. Such application was denied by the Court for lack of jurisdiction on May 4, 1976.

29. Plaintiffs' First Complaint was filed with the Federal Court on April 19. 1976.

30. Nine days after this Court ordered return of the minor plaintiffs, a third suit was begun by the filing of an Original Petition In Suit Affecting the Parent-

Child Relationship which was docketed as Cause No. 3,090 in the Juvenile Court of Montgomery County, Texas, on May 14, 1976.

31. The suit filed in Montgomery County on May 14, 1976, referred to in Paragraph 30, wupra (sic), pertained only to the minor plaintiff Paul Edward Sims and had attached as an Exhibit the identical Exhibit attached to the suit filed March 26, 1976, in Harris County, Texas, under Cause No. 38,295.

32. Based upon medical information and other information which was fifty (50) days old, Ernest Coker, Sr., Judge of the Juvenile Court of Montgomery County, Texas issued an Ex Parte Writ of Attachment for the minor plaintiff Paul Edward Sims on May 14, 1976.

33. On May 21, 1976, counsel for plaintiffs made application for and Honorable John V. Singleton, Jr. entered a Temporary Restraining Order which was followed by and Order of Preliminary Injunction of this three-judge court entered June 18, 1976, restraining and enjoining defendants from filing or prosecuting any state suit based upon the state statutes to which plaintiffs have lodged this constitutional challenge.

34. This three-judge Court found "irreparable harm and injury to Plaintiffs: 1) by the very fact that in the initial proceeding initiated by the State the plaintiffs' family unit was disrupted for a total or forty-two (42) days without any type of relief afforded to plaintiffs; and 2) if the defendants were allowed to initiate further proceedeings (sic) plaintiffs would be placed in a similar situation as they had been prior to obtaining Federal Court relief."

35. That Raymond Vowell, Commissioner, State

Department of Public welfare (sic) has answered by Interrogatory No. 10 that "the source of the CANRIS report has been deleted in accordance with Sec. 34.08 of the Texas Family Code."

36. That on or about April 7, 1976, and before the May 5, 1976, hearing in Federal Court, that Rex Downing as caseworker for the Harris County Child Welfare Unit knew or had cause to know of Paul Sims' statements that "his teacher Mrs. Rhea had spanked him on March 25, 1976, at the John G. Osborne Elementary School".

37. That Rex Downing, Harris County Child Welfare Worker recommended Termination of the Paren-Child Relationship (sic) between the Sims and Paul Edward Sims.

PLAINTIFFS
CONTESTED ISSUES OF FACT

1. That Rex Downing took possission and control of the three minor plaintiffs Paul Edward Sims, Sabrina Marie Sims and Shawana Evette Sims shortly after 1:30 P.M. on March 25, 1976, and caused all three to be transported to the Child Welfare Clinic at 4040 Milam, Houston, Harris County, Texas.

2. No Writ of a magistrate was obtained by Rex Downing prior to his taking possession and control of the three minor plaintiffs. (State Department Objects On Relevancy.)

3. The only notice given to adult plaintiffs of the seizure of their children was be a telephone call to John Pleasant Sims on his job by the school principal.

4. The first hearing afforded plaintiffs after seizure of the three minor plaintiffs on March 25, 1976, was

that of May 5, 1976, before Honorable John V. Singleton, Jr. who ordered return of the three minor plaintiffs to the adult plaintiffs.

5. The names of all the plaintiffs now appear as perpetrators and/or victims of child abuse in a Central Registry by the Texas State Department of Public Welfare in Austin, Texas, by two separate incidents: March 25, 1976 (the date of initial seizure of the three minor plaintiffs) and May 5, 1976 (the date on which minor plaintiffs were ordered restored to adult plaintiffs by this Court), although no judicial finding of any such abuse has been made.

6. That John Pleasnat (sic) Sims and Mary Carter Sims were required by the Harris County Child Welfare Department to attent (sic) counseling sessions under Doctors Blair and Rita Justice at the Southwest Institute for Group and Family Therapy.

AGREED CONCLUSIONS OF LAW

1. There is a compelling State interest in having a quick and effective procedure for the emergency removal of children from homes where child abuse occurs.

2. Where a real, immediate, irreparable physical harm is likely to befall a child through abuse, the State may have an interest in taking emergency possession prior to obtaining a Writ.

PLAINTIFFS CONTESTED ISSUES OF LAW

1. There is a real and actual controversy between parties having adverse legal interest.

2. This Court should not abstain from interfering in 'ongoing juvenile proceedings', based upon the

YOUNGER-HUFFMAN principal. This case is an exception to the YOUNGER-HUFFMAN-LASSARD doctrines, in that;

   1. Plaintiffs have been victims of repeated bad-faith prosecutions and harrassment by defendants.

   2. Challenged state statutes are flagrantly and blatantly unconstitutional.

   3. Immediate and irreparable injury, danger and harm will result to plaintiffs.

3. All challenged provisions of Title 2, Texas Family Code, are facially unconstitutional, or unconstitutional as applied to plaintiffs, or are void for vagueness.

4. The evidence in this case has raised issues under Article I, Section 9, and the First, Fourth, Fifth, Ninth, Tenth and Fourteenth Amendments of the United States Constitution.

5. Where the State seizes children under emergency situtation, prior to obtaining a writ, the State must immediately, and within twenty-four hours, provide for a due process adversary hearing or release the children to a parent or legal guardian or a person responsible for the children.

DEFENDANTS CONTESTED ISSUES OF LAW

1. Pursuant to *Rizzo v. Goode*, 45 L.W. 4095 (1976), there is no case of controversy between the plaintiffs and defendants. Raul Jimenez, Jamie Clements, Hilmar G. Moore, Raymond Vowell, Gene Lege, and Marian Lockley.

2. Pursuant to *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), the principles of federalism and comity prevent this Federal Court from interferring in on-going juvenile proceedings in the district court of Montgomery County, Texas.

3. The importance of protecting the health and safety of children on an emergency basis overrides the right of parents to notice and a hearing during the initial stage of a child abuse hearing.

4. The maximum time period of 20 days which may elapse between possession of a child under Chapter 17 and the holding of a hearing under Section 11.11(b) is consistent with due process requirements.

5. The challenged Family Code provisions concerning the reporting and investigation of child abuse and related provisions are not void for vagueness.

6. All challenged Family Code provisions are constitutional on their face.

7. The evidence in this case has raised no issues under Article I, Section 9 of the First, Fourth, Fifth, Sixth or Ninth Amendments of the United States Constitution.

PLAINTIFFS EVIDENCE

1. Petition in Cause No. 38,295, 'Suit for Protection of Child in Emergency', pursuant to Chapter 17, Texas Family Code.

2. Petition in Suit Affecting Parent-Child Relationship, Cause No. 38,295.

3. 'Show Cause Order' in Suit Affecting the Parent-Child Relationship, Cause No. 38,295.

4. Subpoena for witness in Cause No. 1,069,341, Brooks.

5. Subpoena for witness in Cause No. 1,069,341, Rhea.

6. Subpoena for witness in Cause No. 1,069,341, Mertens.

7. Subpoena for witness in Cause No. 1,069,341, Mrs. Melvin Jones.

8 & 10. Petition, Order For Hearing, and Order of Writ of Habeas Corpus in Cause No. 1, 069, 341. Sheriff's service of writ upon Gene Lege.

9. Docket sheet in Cause No. 1, 069,341.

11, 12 & 13. Central Record Files showing that the minor plaintiffs had not been the subjects of a suit affecting the parent-child relationship, dated April 14, 1976.

14. Letter, showing Instruments transferred from Juvenile Court of Harris County, Texas to the Juvenile Court of Montgomery County, Texas.

15. Order of Transfer in Cause No. 38,295, Order in Suit For Protection of Child in Emergency.

16. Cause No. 3,030, from Juvenile Court of Montgomery County, Texas, showing receipt of Cause No. 38,295 from Harris County, Texas.

17. Docket Sheet in Cause No. 38,295.

18. Motion to Modify in Cause No. 38,295.

19. Order to Modify in Cause No. 38,295.

20. Letter from the 14th Court of Civil Appeals denying Relator's motion for leave to file petition for writ of habeas copus for lack of jurisdiction.

20a. Complete file from 14th Court of Civil Appeals regarding the Sims.

21. Cause No. 3,090, 'Suit Affecting the Parent-Child Relationship as to minor plaintiff, Paul Edward Sims, filed in the Juvenile Court of Montgomery County, Texas, on the 14th day of May, 1976.

22. Ex Parte Writ of Attachment for Paul Edward Sims, issued on the 14th day of May, 1976, by Judge Ernest A. Coker.

22a. Docket Sheet in Cause No. 3,090, Montgomery County, Texas.

23. Temporary Restraining Order issued by Judge John V. Singleton on the 21st day of May, 1976.

24. Order of Preliminary Injunction, entered by the Three-Judge Panel on the 18th day of June, 1976.

25. Texas Department of Public Welfare 'CANRIS REPORT' incident number A061353, involving all the plaintiffs, showing date abuse occurred as 3/25/76.

26. Texas Department of Public Welfare 'CANRIS REPORT' showing date abuse occurred as 5/05/76.

27. CANRIS REPORTS, bearing deletions, same as numbers A061353 and A066060, attached to Raymond Vowell's answer to Interrogtory No.10.

28. Dr. Maire (sic) Surgi's hand written narrative report, regarding the minor plaintiffs, received from the State Department on or about September 2, 1976.

29. Dr. Marie Surgi's hand written narrative report regarding all plaintiffs, and letter from Jan Connerman, counsel for Dr. Surgi, received October 2, 1976.

30. Hospital records from St. Joseph's Hospital of Paul Edward Sims, from March 27 through April 7, 1976. (Stipulated)

31. Duplicate Card, showing Mrs. Rhea's report of paddling of Paul Edward Sims.

32. Article Four, Sections 473.100, 473.120 and 473.130 of Houston Independent School District Procedures, and Houston Independent School Reporting For for Child Abuse and Neglect.

33. Transcript of Zoe Martin.

DEFENDANTS EVIDENCE

1. Case notes of Rex Downing on the Sims family from March 25, 1976 through May 10, 1976. (Stipulated)

2. Medical records of Dr. Marie Surgi on the Sims children on March 25, 1976. (Stipulated)

3. Medical records of Dr. Jesus Diaz on Paul Sims from March 27, 1976, through April 7, 1976. (Stipulated)

4. Hospital records on admission of Paul Sims to St. Joseph's Hospital from March 27, 1976, through April 7, 1976. (Stipulated)

5. Psychological Evaluation by Comprehensive Series for Education (Ann Stanton) of Paul Edward Sims done on May 4, 1976. (Affidavit)

6a, b & c. Photographs of Paul Edward Sims' injuries taken by Rex Downing at Harris County Child Welfare on March 25, 1976.

7. Two photographs of Paul Edward Sims' injuries taken by Houston Police officer R. G. Hickman

at St. Joseph's Hospital on March 27, 1976.

8. Records of counseling by Dr. Blair Justice.

9. Records of counseling by Dr. E. E. Johnstone. (Stipulated)

10. Statistical Summaries of Incidents of Child Abuse in Texas.

11. Illustrative material on child abuse.

WITNESSES

PLAINTIFFS WOULD CALL THE FOLLOWING WITNESSES:

1. JOHN PLEASANT SIMS, Rt. 3, Box 1304, Conroe, Texas. Adult plaintiff; will testify as to the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure.

2. MARY CARTER SIMS, Rt. 3, Box 1304, Conroe, Texas. Adult plaintiff; will testify as to the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure.

3. SABRINA MARIE SIMS, Rt. 3, Box 1304, Conroe, Texas. Minor plaintiff; will testify as to her knowledge of the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure.

4. PAUL EDWARD SIMS, Rt. 3, Box 1304, Conroe, Texas. Minor plaintiff; will testify as to his knowledge of the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure. Paul will also testify that his teacher, Mrs. Theresa Rhea, paddled him along with other classmates on March 25, 1976, at a time after his father John Sims had left the school.

5. SHAWANA EVETTE SIMS, Rt. 3, Box 1304, Conroe, Texas. Minor plaintiff; will testify as to her knowledge of the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure.

6. ZOE MARTIN, Deputy Clerk, Juvenile Court, Harris County Family Law Center. Will bring records and testify thereto of Case Numbers 38,295 and 1,069,311 involving all plaintiffs filed in the Juvenile Court, Harris County, Texas. (Transcript).

7. R. J. GRAY, Deputy Clerk, Montgomery County District Court, Conroe, Texas. Will bring records and testify thereto of Case Numbers 3,030 and 3,090 involving all plaintiffs filed in the Juvenile Court, Montgomery County, Texas. (Stipulated).

8. ROBERT LOWRY, Judge, Juvenile Court, Harris County, Texas. Will testify to all court proceedings involving all plaintiffs filed in the Juvenile Court of Harris County, Texas. (Subpoena).

9. CAROL JONES, 1700 North Loop East, Houston, Texas. Will testify that she is the Petitioner in Cause No. 3,090 involving minor plaintiff Paul Sims, filed in the Juvenile Court of Montgomery County, Texas (Adverse Witness). (Stipulated).

10. REX DOWNING, 2913 Louisiana, Houston, Texas. Mr. Downing will testify that he recommended termination of the parent-child relationship as to Paul Sims and the adult plaintiffs. (Adverse witness).

11. GLORIA JONES, 800 Ringold Street, Houston, Texas. Will testify as to her knowledge of the condition of the minor plaintiffs on March 25, 1976, and her participation in report of child abuse, and events following thereafter. (Adverse witness).

12. THERESA J. RHEA, 1212 Nashau Street, Houston, Texas. Paul Sims' teacher on March 25, 1976. (Adverse Witness).

13. DR. EULA FAYE PERRY, 3502 Liberty Road, Houston, Texas. Dr. Perry will testify about her examination and treatment of the Sims children after March 25, 1976. (Stipulated).

14. INEZ HARRIS, 800 Ringold Street, Houston, Texas. School nurse; will testify as to her participation in treating Paul Sims on March 25, 1976 and May 10, 1976.

21. RAYMOND VOWELL, Commissioner of the State Department of Public Welfare of the State of Texas, with offices in Austin, Travis County, Texas. (Adverse Witness).

DEFENDANTS WOULD CALL THE FOLLOWING WITNESSES:

1. REX DOWNING, 2913 Louisiana, Houston, Texas. Mr. Downing will testify about the casework he did concerning the Sims family. (Stipulated).

2. DR. MARIE SURGI, 4040 Milam, Houston, Texas. Dr. Surgi will testify about her knowledge of Paul Sims' injuries on March 25, 1976, including the paddling administered by Mr. John Sims. (Stipulated).

3. THERESA RHEA, Osborne Elementary School, 800 Ringold, Houston, Texas. Ms. Rhea will testify about her knowledge of Paul Sims' injuries on March 25, 1976, including the paddling administered by Mr. John Sims.

4. DR. JESUS DIAZ, Suite 1116, St. Joseph Professional Building, 2000 Crawford, Houston, Texas. Dr. Diaz will testify about the medical

condition of Paul Sims from March 27, 1976 through April 7, 1976.

5. DRS. BLAIR & RITA JUSTICE, 5925 Kirby Drive #221, Houston, Texas. Drs. Justice will testify about the psychological condition of Mr. and Mrs. Sims.

6. DR. E. E. JOHNSTONE, 1300 Moursund, Houston, Texas. Dr. Johnstone will testify about the need of Mr. and Mrs. Sims for continued counseling on their parenting skills. (Stipulated).

7. DR. EULA FAYE PERRY, 3502 Liberty Road, Houston, Texas. Dr. Perry will testify about her examination and treatment of the Sims children after March 25, 1976.

8. JUANA FALCON, 1300 Moursund Street, Houston, Texas. (TRIMS). Medical Records Clerk.

9. MS. BOBBIE MATTHEWS, John H. Reagan Building, Austin, Texas. Ms. Matthews will testify regarding data about child abuse in Texas.

10. MS. KAY LOVE, John H. Reagan Building, Austin, Texas. Ms. Love will testify regarding data about child abuse in Texas.

11. DR. JOAN HEBELER, 207 Barracuda, Galveston, Texas. Dr. Hebeler will testify about the medical aspects of child abuse.

12. DR. AUGUST R. TAROSI, 1203 Missouri, Houston, Texas. Dr. Tarosi will testify about the Comprehensive Services for Education Psychological Evaluation of Paul Sims.

EXPERT WITNESS
SUMMARY OF QUALIFICATIONS

NAME: Joan Rochelle Hebeler, M.D.

DATE: October 19, 1976

PRESENT POSITION AND ADDRESS:
Associate Professor
Department of Pediatrics
University of Texas Medical Branch
Galveston, Texas 77550

BIOGRAPHICAL:
Birth Date: April 30, 1934
Birth Place: Independence, Missouri
Marital Status: Single
Home Address: 207 Barracuda
Galveston, Texas 77550

EDUCATION:

1955	B.A., University of Wisconsin, Madison, Wisconsin
1958	M.D., University of Wisconsin, Madison, Wisconsin
1958-59	Internship, Rotation, University of Texas Medical Branch, Galveston, Texas
1959-61	Resident, Department of Pediatrics, University of Texas Medical Branch, Galveston, Texas
1961-62	Chief Resident, Director of Pediatrics; Fellow (6 months in Pediatric Cardiology and 6 months in Pediatric Menatology), University of Texas Medical Branch, Galveston, Texas
Aug. 1962	Fellow in Child Development, University of Texas
June 1963	Medical Branch, Galveston, Texas

MEMBERSHIP IN SCIENTIFIC SOCIETIES:

American Academy of Pediatrics

Child Development, American Academy of Pediatrics, Member
American Medical Association
Texas Medical Association
Texas Pediatric Society
Galveston County Medical Society
Ambulatory Pediatric Association
Chairman of Committee Adoption and Dependent Care - Texas Academy of Pediatrics, 1976

ADDITIONAL INFORMATION:

1964 - Certified by American Board of Pediatrics
Fluent in Spanish

DEFENDANT MARIE L. SURGI'S PROPOSED FINDINGS OF FACT

1. That on March 25, 1976, Dr. Marie L. Surgi examined Paul Sims, Shawana Sims and Sabrina Sims with the express consent of their mother, Mary Louise Sims and the implied consent of their father John Pleasant Sims.

2. During her examination of the Sims children of March 25, 1976, Dr. Marie Surgi conducted herself as an ordinarily prudent doctor in the same or similar circumstances.

SETTLEMENT

An Oral Settlement Offer has been made by Defendants, The State Department, such offer being considered frivolous and without merit by Plaintiffs, has been orally rejected by Plaintiffs.

TRIAL

All Parties anticipate trial to last at least one week. All witnesses are available for the week of Octover 26, 1976.